

DAVID WHITING.

[To accompany Bill H. R. No. 377.]

MARCH 19, 1860.

Mr. CASE, from the Committee on Territories, made the following

REPORT.

*The Committee on Territories, to whom was referred the memorial of the legislature of the Territory of New Mexico, praying that the Secretary of the Treasury may be required to pay to David V. Whiting the amount claimed by him for services as translator for said Territory, having had the same under consideration, now submit the following report:*

It appears from said memorial, and from other duly authenticated documents therewith submitted to your committee, that on the establishment of the territorial government under the organic act, it became necessary to create the office of translator for said government; the duties of the office being to translate the laws and journals of both branches of the legislature from English to Spanish, and *vice versa*, prepare them for the press, superintend the publication of the Spanish version of the laws, and also to translate whatever should be required by the governor or secretary of the Territory.

This office was, it seems, first established by the acting governor, and said Whiting appointed to fill it on the 8th day of March, A. D. 1851. He continued to hold the office and discharge its duties until the 21st day of September, A. D. 1852, when he was succeeded by Samuel Ellison, under the appointment of Governor Lane.

The power of the governor to create and fill the office, in the first instance, is not apparent; but your committee entertain no doubt that the services of a translator and interpreter were necessary from the beginning, and on the 19th day of June, A. D. 1851, the territorial legislature passed an act establishing the office, defining its duties, requiring the governor to fill it, and fixing the salary at the sum of two thousand dollars per annum, to be paid quarterly out of the fund appropriated by Congress for the contingent expenses of the legislative assembly. A copy of said act was submitted to your committee, and will be found among the documents accompanying this report. Under this act said Whiting continued to hold said office, and discharge its

duties, without any reappointment, until he was superseded, as above stated.

It is stated in said legislative memorial that the salary fixed "was barely sufficient to procure the services of a person capable of fulfilling the duties required of him, on account of the scarcity of persons of sufficient skill to translate from English to Spanish and *vice versa*."

It further appears that said Whiting has received no part of his salary as such translator, his claim thereto having been rejected by the Comptroller of the Treasury, for the alleged reason that "the legislative assembly of the Territory had no authority to dispose of the funds appropriated by Congress for the expenses of said assembly."

Your committee submit, that by the 7th section of the act organizing said Territory, (see Statutes at Large, vol. 9, page 449,) it is enacted that "the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and said organic act," and that "all the laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, and, if disapproved, shall be null and of no effect."

In the judgment of your committee, said territorial act creating said office of translator is in none of its provisions inconsistent with the Constitution or said organic law. It was duly submitted to Congress, and your committee are not aware that it was ever disapproved. Thus it became virtually the law of Congress through its duly constituted agent, the territorial legislature. Thus said Whiting became legally entitled to the prescribed salary from the date of said law. But as the territorial government had enjoyed the benefit of his services in the same capacity for several months before the law was passed, as it appears that those services were proper, if not absolutely essential, and that the salary named was none too great compensation for the skill required and services rendered, your committee deem it but equitable and just that said Whiting should be paid, at the rate fixed by said law, for the whole time during which he actually discharged the duties of said office.

Your committee therefore report the following bill, and recommend its passage.